



1 claim was denied initially and on reconsideration. (Tr. 37-40.)  
2 Plaintiff requested a hearing before an administrative law judge  
3 (ALJ), which was held on November 6, 2007, before ALJ Paul Gaughen.  
4 (Tr. 279-302.) Plaintiff, who was not represented by counsel and  
5 who declined to seek representation on the record, testified; lay  
6 witness Thomas Elder also testified. (Tr. 280.) The ALJ denied  
7 benefits on January 23, 2008, and the Appeals Council denied review.  
8 (Tr. 11-17, 2-4.) The instant matter is before this court pursuant  
9 to 42 U.S.C. § 405(g).

#### 10 **STATEMENT OF THE CASE**

11 The facts of the case are set forth in detail in the transcript  
12 of proceedings, and are briefly summarized here. At the time of the  
13 hearing, Plaintiff was 54 years old. She has a high-school  
14 education and several years of college, during which she studied  
15 business and marketing. (Tr. 287.) Plaintiff has past work  
16 experience as a lighting designer and consultant and in accounting.  
17 (Tr. 288.) She stated she has been unable to work since 1992  
18 because she tires easily, she cannot wake up, she is in pain most of  
19 the time and falls and hurts herself badly due to vertigo. (Tr.  
20 291.) She testified she almost died two times because of the field  
21 burning. (Tr. 293.) She also stated that her treatment records  
22 from Group Health medical center covering her alleged period of  
23 disability were missing, and that she was informed by a Group Health  
24 employee that the records "no longer exist." *Id.*

#### 25 **ADMINISTRATIVE DECISION**

26 ALJ Gaughen first found Plaintiff met the insured status  
27 requirements for DIB, and she was insured through June 30, 1998.

(Tr. 11.) At step one of the sequential evaluation process, the ALJ found Plaintiff had not engaged in substantial gainful activity since the alleged onset date. (Tr. 13.) At step two, he found that before Plaintiff's insured status expired she had the following medical conditions: "complaints of ear problems/bilateral recurrent otalgia of unclear etiology." (*Id.*) He then found the medical evidence indicated after her insured status expired, she had problems with rhinitis and temporomandibular joint (TMJ) dysfunction, she was prescribed antidepressants in May 1999, and treated for a right ankle fracture in August 2000. (Tr. 13-14.) The ALJ then found Plaintiff did not have a severe impairment or combination of impairments prior to the expiration of her insured status that significantly limited her ability to perform basic work-related activities for 12 consecutive months. (*Id.*) He found Plaintiff's statements regarding her impairments, limitations and symptoms during her insured status period were not credible. (Tr. 17.) He also found the testimony of her friend, Mr. Elder, and letters from friends were "significantly after" Plaintiff's insured status and not supported by medical records relating to the insured period. (Tr. 17.)

#### STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the court set out the standard of review:

A district court's order upholding the Commissioner's denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9<sup>th</sup> Cir. 2000). The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098.

Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

#### SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and

1 detailed objective medical reports of h[is] condition from  
2 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
404.1512(a)-(b), 404.1513(d)).

3 It is the role of the trier of fact, not this court, to resolve  
4 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
5 supports more than one rational interpretation, the court may not  
6 substitute its judgment for that of the Commissioner. *Tackett*, 180  
7 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
8 Nevertheless, a decision supported by substantial evidence will  
9 still be set aside if the proper legal standards were not applied in  
10 weighing the evidence and making the decision. *Browner v. Secretary*  
11 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
12 there is substantial evidence to support the administrative  
13 findings, or if there is conflicting evidence that will support a  
14 finding of either disability or non-disability, the finding of the  
15 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
16 1230 (9<sup>th</sup> Cir. 1987).

#### 17 ISSUES

18 The question is whether the ALJ's decision is supported by  
19 substantial evidence and free of legal error. Plaintiff argues the  
20 ALJ erred when he: (1) found no severe impairment at step two; (2)  
21 failed to develop the record; (3) inadequately assessed her  
22 credibility; and (4) failed to consider lay testimony properly.  
23 (Ct. Rec. 17 at 8-15.)

#### 24 DISCUSSION

##### 25 A. Step Two: Burden of Proof

26 At step two of the sequential evaluation, the claimant has the  
27 burden to present evidence sufficient to establish a "severe"  
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1 impairment, i.e., one that significantly limits her physical or  
2 mental ability to do basic work activities. 20 C.F.R. § 404.1520(c).  
3 To satisfy step two's requirement of a severe impairment, the  
4 claimant must prove the existence of a physical or mental impairment  
5 by providing medical evidence consisting of signs, symptoms, and  
6 laboratory findings; the claimant's own statement of symptoms alone  
7 will not suffice. 20 C.F.R. § 404.1508, .1528.

8 For purposes of step two, an impairment must result from  
9 "anatomical, physiological or psychological abnormalities" which can  
10 be shown by "medically acceptable clinical and laboratory diagnostic  
11 techniques." 20 C.F.R. § 404.1528. However, the fact that a  
12 medically determinable condition exists does not automatically mean  
13 the symptoms are "severe," or "disabling" as defined by the Social  
14 Security Regulations (Regulations). See, e.g., *Edlund*, 253 F.3d at  
15 1159-60; *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989); *Key v.*  
16 *Heckler*, 754 F.2d 1545, 1549-50 (9<sup>th</sup> Cir. 1985). Significantly, the  
17 Regulations provide a claimant must present evidence that her severe  
18 impairment will result in death or meets the "duration requirement,"  
19 that is, it is expected to last for a continuous period of at least  
20 twelve months. 20 C.F.R. §§ 404.1520(a)(4)(ii), 404.1509. Thus, if  
21 the Commissioner finds the claimant does not have a severe medically  
22 determinable physical or mental impairment that meets the duration  
23 requirement, a finding of not disabled is warranted at step two, and  
24 the sequential evaluation is ended.

25 The Commissioner has passed regulations which guide dismissal  
26 of claims at step two. Those regulations state an impairment may be  
27 found to be not severe when "medical evidence establishes only a  
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1 slight abnormality or a combination of slight abnormalities which  
2 would have no more than a minimal effect on an individual's ability  
3 to work." *Social Security Ruling (SSR)* 85-28.<sup>1</sup> "Medical evidence  
4 alone is evaluated in order to assess the effects of the impairments  
5 on ability to do basic work activities." *Id.* Thus, in determining  
6 whether a claimant has a severe impairment, the ALJ evaluates the  
7 medical evidence submitted and must explain the weight given to the  
8 opinions of accepted medical sources in the record.

9 **1. Credibility Findings at Step Two**

10 Plaintiff argues the ALJ did not provide an adequate basis for  
11 his credibility findings, and remand is necessary for development of  
12 the record, as well as a proper credibility evaluation. (Ct. Rec. 17  
13 at 14-15.)

14 Although medical evidence alone is considered at step two, a  
15 claimant's credibility may be a factor considered at step two if a  
16 claimant's allegations regarding symptoms conflict significantly  
17 with the medical evidence. *See Webb v. Barnhart*, 433 F.3d 683, 688  
18 (9<sup>th</sup> Cir. 2005). Nonetheless, regardless of a claimant's  
19 credibility, and how many symptoms are alleged (or how genuine the  
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21 <sup>1</sup> Social Security Rulings are issued to clarify the  
22 Commissioner's regulations and policy. They are not published in  
23 the federal register and do not have the force of law. However,  
24 "deference" is given to the Commissioner's interpretation of its  
25 regulations. *Bunnell v. Sullivan*, 947 F.2d 341, at 346 n.3 (9th  
26 Cir. 1991). The Supreme Court upheld the validity of the  
27 Commissioner's severity regulation, as clarified in *SSR* 85-28, in  
28 *Bowen v. Yuckert*, 482 U.S. 137, 153-154 (1987).

1 complaints may be), "the existence of a medically determinable  
2 physical or mental impairment cannot be established in the absence  
3 of objective medical abnormalities." *Ukolov v. Barnhart*, 420 F.3d  
4 1002, 1005 (9<sup>th</sup> Cir. 2001)(quoting SSR 96-4p).

5 Further, it is well-settled that, "[a]n ALJ cannot be required  
6 to believe every allegation of disabling pain, or else disability  
7 benefits would be available for the asking, a result plainly  
8 contrary to 42 U.S.C. § 423 (d)(5)(A)." *Fair*, 885 F.2d at 603. As  
9 recognized by the Ninth Circuit, even when medical evidence of a  
10 condition that would reasonably be expected to cause pain or other  
11 symptoms is presented, many medical conditions produce symptoms not  
12 severe enough to preclude gainful employment. *Id.* When the ALJ  
13 finds a claimant's statements as to the severity of impairments,  
14 pain and limitations are not credible, the ALJ must make a  
15 credibility determination with findings sufficiently specific to  
16 permit the court to conclude the ALJ did not arbitrarily discredit  
17 claimant's allegations. *Thomas v. Barnhart*, 278 F.3d 947, 958-959  
18 (9<sup>th</sup> Cir. 2002); *Bunnell*, 947 F.2d at 345-46. Once an impairment  
19 that would reasonably be expected to cause a symptom is established,  
20 an adjudicator may not reject a claimant's extreme symptom  
21 complaints solely on a lack of objective medical evidence. SSR 96-  
22 7p.

23 If there is no affirmative evidence that the claimant is  
24 malingering, the ALJ must provide "clear and convincing" reasons for  
25 rejecting the claimant's allegations regarding the severity of  
26 symptoms. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir. 1998). The  
27 ALJ engages in a two-step analysis in deciding whether to admit a  
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1 claimant's subjective symptom testimony. *Lingenfelter v. Astrue*,  
2 504 F.3d 1028, 1035-36 (9<sup>th</sup> Cir. 2007); *Smolen v. Chater*, 80 F.3d  
3 1273, 1281 (9<sup>th</sup> Cir. 1996). Under the first step, the ALJ must find  
4 the claimant has produced objective medical evidence of an  
5 underlying "impairment," and that the impairment, or combination of  
6 impairments, could reasonably be expected to cause "some degree of  
7 the symptom." *Lingenfelter*, 504 F.3d at 1036. Here, Plaintiff did  
8 not meet this first step.

9 As found by the ALJ, and discussed below, the medical evidence  
10 relative to Plaintiff's insured status period (prior to June 1998),  
11 does not establish a severe impairment. (Tr. 16.) The record shows  
12 Plaintiff saw Group Health treatment providers with intermittent  
13 complaints of ear infections and ear pain, which were treated  
14 successfully with antibiotics and pain relievers. Specialist  
15 examinations after the expiration of her insured status revealed no  
16 abnormalities and no follow-up treatment is documented in later  
17 records.

18 Nonetheless, the ALJ proceeded to the second step and assessed  
19 Plaintiff's subjective complaints and allegations. He found  
20 Plaintiff's allegations of disability were inconsistent with the  
21 medical evidence and presented several reasons for giving  
22 Plaintiff's testimony little weight. (Tr. 16.) Specifically, he  
23 found her statements were unsupported by medical evidence in the  
24 record that related to her insured status period, that objective  
25 imaging from the relevant time showed only minor problems relating  
26 to her ears and sinuses, she was on no medication, and her assertion  
27 that she "almost died," was not referenced in any of the Group  
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1 Health records, during or after her insured status expired. (Tr.  
2 16-17.) Additional inconsistencies noted were Plaintiff's  
3 consideration of a face lift in 2002, at which time she indicated  
4 she was taking no prescription drugs and her general health was  
5 "excellent." (Tr. 165.) The ALJ also cited Plaintiff's failure to  
6 apply for DIB until 2005, over 10 years after her alleged onset date  
7 and inability to work, as inconsistent with her claim of disability.  
8 (Tr. 16-17.) These are "clear and convincing" reasons to discount  
9 Plaintiff's unsupported subjective statements. Even if the ALJ did  
10 not adequately address Plaintiff's subjective complaints in his  
11 decision, any failure to do so does not affect the outcome of this  
12 case because, as discussed above, her statements alone are  
13 insufficient to establish a severe impairment at step two. *Ukolov*,  
14 420 F.3d at 1007.

## 15       **2. Medical Evidence Presented**

16       At step two, the ALJ considers opinions of three types of  
17 accepted medical sources: (1) sources who have treated the claimant;  
18 (2) sources who have examined the claimant; and (3) sources who have  
19 neither examined nor treated the claimant, but express their opinion  
20 based upon a review of the claimant's medical records. 20 C.F.R. §  
21 404.1527. A treating physician's opinion carries more weight than  
22 an examining physician's, and an examining physician's opinion  
23 carries more weight than a non-examining reviewing or consulting  
24 physician's opinion. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9<sup>th</sup>  
25 Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). In  
26 evaluating the evidence, the ALJ must provide "clear and convincing"  
27 reasons for rejecting uncontradicted opinions of treating or  
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1 examining physicians; if the opinion is contradicted, it can only be  
2 rejected for "specific" and "legitimate" reasons that are supported  
3 by substantial evidence in the record. *Lester*, 81 F.3d at 830;  
4 *Andrews*, 53 F.3d at 1043.

5 Here, the ALJ thoroughly summarized treatment notes, imaging  
6 reports and letters from Group Health treatment providers, and  
7 referred specialists dated from 1997 through 1999, as well as later  
8 records. He noted that treating providers documented complaints of  
9 ear problems with recurrent otalgia "of unclear etiology." (Tr. 13,  
10 148-63.) The ALJ did not reject any of the acceptable medical  
11 source opinions in the record. The ALJ found that after Plaintiff's  
12 insured period expired, treatment notes from Spokane Pediatric and  
13 Adult Allergy and Asthma clinic found no allergic component to her  
14 symptoms, and a CT scan in October 1998, revealed no evidence of  
15 sinusitis to explain her complaints. Finally, as found by the ALJ,  
16 Plaintiff presented evidence of intermittent complaints of ear pain  
17 and infection, which improved with treatment, and there was no  
18 further mention of the ear problems after 1999. (Tr. 14; *see also*  
19 Tr. 154-63.) The ALJ reasonably concluded that there was "simply no  
20 evidence that the claimant had had a severe impairment/diagnosis of  
21 record that meets the durational requirement prior to the expiration  
22 of her insured status." (*Id.*) The ALJ did not err in his  
23 evaluation of the medical evidence presented.

24 As discussed above, the burden of proof is on Plaintiff to  
25 produce evidence of a medically determinable impairment that meets  
26 the Act's duration requirement. 42 U.S.C. § 423(d)(1)(A); 20 C.F.R.  
27 § 404.1509. The ALJ's finding of no severe impairment that met the  
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1 duration requirement is supported by substantial evidence.

2 **3. Duty to Develop the Medical Record**

3 Plaintiff asserts that the ALJ should have ordered consultative  
4 examinations and made an effort to find additional evidence for that  
5 time. She argues because she was not represented by counsel, the  
6 ALJ had a heightened duty to develop the record. (Ct. Rec. 16 at  
7 10-11.)

8 An ALJ's duty to develop the record further is triggered only  
9 when there is ambiguous evidence or when the record is inadequate  
10 for proper evaluation of evidence. *Mayes v. Massanari*, 276 F.3d  
11 453, 459-60 (9<sup>th</sup> Cir 2001); *Tonapetyan v. Halter*, 242 F.3d 1144, 1150  
12 (9<sup>th</sup> Cir. 2001). The ALJ is only required to seek additional  
13 evidence to resolve ambiguity or conflict if the evidence already  
14 present consistently favors the claimant. *Lewis v. Apfel*, 236 F.3d  
15 503, 514-15 (9<sup>th</sup> Cir. 2001). Plaintiff is correct that, where  
16 Plaintiff is not represented by counsel, the adjudicator's duty is  
17 heightened; the ALJ is obliged to "scrupulously and conscientiously  
18 probe into, inquire of, and explore for all relevant facts" and be  
19 "especially diligent in ensuring that favorable as well as  
20 unfavorable facts and circumstances are elicited." *Id.* (citing *Cox*  
21 *v. Califano*, 587 F.2d 988, 991 (9<sup>th</sup> Cir. 1978)). However, the  
22 claimant must show prejudice or unfairness in the proceedings to be  
23 entitled to a remand. *Hall v. Secretary of Health, Ed. and Welfare*,  
24 602 F.2d 1372 (9<sup>th</sup> Cir. 1979).

25 An independent review of the hearing transcript and medical  
26 record indicates the ALJ was diligent in his attempts to (1) inform  
27 Plaintiff of her right to counsel (Tr. 282-84), and (2) uncover all  
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1 possible sources of medical evidence that would assist him in  
2 evaluating Plaintiff's medical condition between 1992 and 1998, her  
3 insured status period. (Tr. 282, 293, 299-300.) At the hearing, in  
4 response to ALJ Gaughen's inquiry, Plaintiff reported several times  
5 that she had attempted to get records from Group Health, and they  
6 informed her records from 1997 were missing. (Tr. 294.) When asked  
7 by the ALJ if there were other providers he could contact, she  
8 replied she did not think anything else was available. (Tr. 294.)  
9 Given the fact that Group Health had responded to requests for  
10 records (see, e.g., Tr. 147-62), and no other providers were  
11 identified by Plaintiff when asked at the hearing, the ALJ met his  
12 duty to scrupulously inquire about additional records.

13 Plaintiff also suggests the ALJ should have contacted some  
14 other "treatment" providers found on a handwritten list in the  
15 transcript. (Ct. Rec. 17 at 11; Tr. 179.) She does not identify  
16 which names are acceptable medical sources who have relevant  
17 information. This non-specific, conclusory assertion is insufficient  
18 to support an argument that the ALJ failed to adequately develop the  
19 record. *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d  
20 1155, 1161 n.2 (9<sup>th</sup> Cir. 2008). The ALJ met his duty to inquire and  
21 was diligent in efforts to seek additional evidence.

22 Plaintiff next contends that new consultative examinations  
23 could establish possible physical and mental impairments and, thus,  
24 should have been ordered. (Ct. Rec. 17 at 12.) This speculative  
25 argument fails. The record shows Plaintiff was referred by Group  
26 Health Cooperative to Dr. Benage, ENT specialist, and Dr. Kernerman,  
27 D.O, of the Allergy and Asthma clinic, for evaluations in September  
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1 and October 1998. (Tr. 202-06.) Although Dr. Benage suspected  
2 rhinitis and TMJ in September 1998, there is no evidence in later  
3 records that the suspected conditions met the severity or duration  
4 requirements of the Act during Plaintiff's insured status period.  
5 As found by the ALJ, later records do not indicate Plaintiff was  
6 treated for either condition. (Tr. 14.) Plaintiff's suggestion that  
7 consultative examinations almost ten years after her date of last  
8 insured would be probative in this matter is without merit. Because  
9 the record indicates neither a possible favorable outcome for  
10 Plaintiff nor ambiguity in the evidence before the ALJ, further  
11 development of the record was not required. *Mayes*, 276 F.3d at  
12 459-60; *Lewis*, 236 F.3d at 514-15.

#### 13 4. Non-Medical "Other Source" Opinions

14 Plaintiff argues remand is necessary for proper consideration  
15 of the testimony and statements from third-parties submitted in her  
16 case. (Ct. Rec. 17 at 14-15.) Citing a recent Ninth Circuit case,  
17 *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9<sup>th</sup> Cir. 2009), Plaintiff  
18 argues the ALJ's reasoning that the statements of her friends and  
19 past employers were not supported by medical evidence is error  
20 requiring remand. (*Id.*; Tr. 17.)

21 Although the ALJ is required to "consider observations by  
22 non-medical sources as to how an impairment affects a claimant's  
23 ability to work," *Sprague*, 812 F.2d at 1232, at step two when the  
24 ALJ determines whether a claimant has a medically determinable  
25 impairment, the effects of symptoms are not probative unless an  
26 impairment meeting the duration requirement is established by  
27 medical evidence. SSR 85-28. Information from "other [non-medical]

sources," such as parents, caregivers, siblings, friends and employers, can neither establish the existence of a medically determinable impairment, nor establish disability absent corroborating competent medical evidence. 20 C.F.R. § 404.1513(d); *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9<sup>th</sup> Cir. 1996); SSR 06-03p. Further, when assessing a medical diagnosis, it is appropriate "to discount lay testimony that conflicts with available medical evidence." *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9<sup>th</sup> Cir. 1984) (citing 42 U.S.C. § 423(d)(3)) (medically acceptable diagnostic techniques required to establish a disability). Thus, while lay witness opinions are appropriately considered when assessing an individual's symptoms and ability to perform work tasks, they are not probative at step two when medical evidence only is evaluated to discern diagnoses and whether the claimant has medically determinable impairments that meet the duration requirement. *Nguyen*, 100 F.3d 1462.

Here, the ALJ summarized Mr. Elder's testimony (Tr. 16, 296-99), commented on the third-party statements written between 2002 and 2006, (Tr. 103-10), and referenced a letter from Plaintiff's former employer, Robert Smith, written in October 1994.<sup>2</sup> (Tr. 16, 17.) It does not appear the ALJ rejected Mr. Elder's testimony that

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<sup>2</sup> Mr. Smith reported Plaintiff was in a car accident and had missed work frequently after that due to headaches and ear aches. (Tr. 277.) Although the ALJ noted the signature was a "stamped signature," he did not reject the information provided in this letter. Mr. Smith's observations cannot establish a medically determinable impairment.

1 he lived next door to Plaintiff in 1997-1998, helped take care of  
2 her, witnessed her deterioration and inability to stay on her feet  
3 for very long, and that she had a history of a broken ankle that  
4 required surgery. (Tr. 16.) Further, the ALJ accurately noted the  
5 third-party statements were written significantly after Plaintiff's  
6 insured status, and were not supported by her medical records. (Tr.  
7 17.) To the extent the lay witness statements and testimony were  
8 submitted to support a diagnosis of a medically determinable  
9 impairment at step two, they were neither probative nor significant;  
10 therefore, the ALJ was not required to supply reasons for rejecting  
11 them.<sup>3</sup> SSR 06-03p. Because the ALJ found Plaintiff not disabled at  
12 step two, he did not proceed to assess her ability to perform basic  
13 work activities, at which point the lay witness statements would  
14 have been probative.

15 \_\_\_\_\_  
16 <sup>3</sup> The case before this court is distinguishable from *Bruce v.*  
17 *Astrue*, cited by Plaintiff. In *Bruce*, the ALJ failed to give  
18 reasons for rejecting the claimant's spouse's credible testimony  
19 when making his residual functional capacity findings at step four.  
20 *Bruce*, 557 F.3d at 115-16. The court held, "The ALJ was required to  
21 consider and comment upon competent lay testimony, as it concerned  
22 how Bruce's impairments impact his ability to work." *Id.* (Emphasis  
23 added.) Here, the ALJ was concerned with whether a medically  
24 determinable severe impairment existed during Plaintiff's period of  
25 insured status. The observations of non-medical third parties were  
26 neither significant nor probative at step two; therefore, a detailed  
27 explanation of the weight given these opinions was not required.  
28 See SSR 06-03p.

1 The ALJ rationally interpreted the evidence to conclude that  
2 Plaintiff did not meet her burden at step two. The record in its  
3 entirety supports the ALJ's finding that Plaintiff failed to present  
4 medical evidence of an impairment that significantly limited her  
5 ability to work for 12 consecutive months. Plaintiff's statements  
6 alone cannot establish a medically determinable impairment or  
7 disability. Accordingly,

8 **IT IS ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 16**) is  
10 **DENIED;**

11 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 21**) is  
12 **GRANTED;**

13 The District Court Executive is directed to file this Order and  
14 provide a copy to counsel for Plaintiff and Defendant. The file  
15 shall be closed and judgment entered for Defendant.

16 DATED October 14, 2009.

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18 S/ CYNTHIA IMBROGNO  
19 UNITED STATES MAGISTRATE JUDGE  
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